

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660

Board of Appeals Case No. S-2827
(OZAH Case No. 12-16)

¹ Mr. Hale appeared at the second hearing, and indicated that he was appearing purely in a “support” role for Ms. Redding. 12/17/12 Tr. 4-5. He assisted her during the hearing, but he did not testify in the case.

I. STATEMENT OF THE CASE

Petition No. S-2827, filed by Petitioner Ampai Redding on October 13, 2011, seeks a special exception, pursuant to §59-G-2.00 of the Zoning Ordinance, to permit an accessory apartment use on the ground level of an existing single-family home located at 1109 Loxford Terrace, Silver Spring, Maryland, on land in the R-60 Zone. The property's legal description is Lot 45, Block N of the Forest Knolls Subdivision of Silver Spring. The tax account number is 13-01351350.

A hearing was scheduled for April 12, 2012, by notice issued on November 7, 2011. Exhibit 11. On February 1, 2012, Technical Staff at the Maryland-National Capital Park and Planning Commission reported to the Hearing Examiner that Staff was having difficulty contacting Petitioner, and needed to obtain additional information to complete their review. Exhibit 12. When Petitioner failed to respond to a certified letter from Staff (Exhibit 12(a)), the Hearing Examiner issued an Order on March 22, 2012, directing Petitioner to immediately contact Technical Staff and supply them with all needed information.

On April 4, 2012, Technical Staff informed the Hearing Examiner by e-mail that Petitioner had left a voice mail indicating that she had been out of the country because of a family emergency. Exhibit 15. On April 5, 2012, Housing Code Inspector Unray Peters, of the Department of Housing and Community Affairs (DHCA), reported his preliminary findings, which listed a number of violations, including, *inter alia*, that the Applicant already had two tenants occupying a rental unit in her house (Exhibit 19). Based on that fact, Technical Staff recommended denial of the special exception in a report issued April 11, 2012 (Exhibits 21 and 24). Mr. Peters' findings also indicated that the accessory apartment had habitable space of 258 square feet, which would allow a maximum occupancy of two tenants.

The initial hearing in the case was convened on April 12, 2012. Petitioner Ampai Redding

appeared *pro se*. Also testifying was Inspector Unray Peters. There was no community testimony.²

At the hearing, the Hearing Examiner explained to Ms. Redding multiple times that, under Zoning Ordinance §59-G-2.00(a)(5)(ii), “The accessory apartment must not be located on a lot where any of the following otherwise allowed residential units exist: guestroom for rent, boarding house or registered living unit.” 4/12/12 Tr. 8-25. The Housing Code Inspector, Unray Peters, also explained that if the boarders remained, Petitioner could not have the accessory apartment. 4/12/12 Tr. 9-11.

Petitioner elected to postpone the hearing until she could decide what to do about her boarders. The hearing was thus postponed until September 20, 2012. 4/12/12 Tr. 16-20. Ultimately, the case was rescheduled and noticed on November 16, 2012, for a hearing on December 17, 2012. Exhibit 31.

The Department of Housing and Community Affairs re-inspected the property on September 20, 2012. On September 28, 2012, Housing Code Inspector Peters sent Petitioner a letter (Exhibit 30) reminding her that all violations revealed in the inspections had to be corrected. On October 18, 2012, Petitioner’s daughter, Ann Redding, informed OZAH by e-mail (Exhibit 29) that the two boarders would be moving out of the premises. On October 25, 2012, DHCA inspected the premises again, and on December 7, 2012, Mr. Peters sent a letter to Petitioner acknowledging that all of the reported violations had been corrected. Exhibit 34.

In a revised report dated December 5, 2012, Technical Staff recommended approval of the petition, including a finding that the subject site is now occupied only by the owner. Exhibit 33.

The second hearing convened, as scheduled, on December 17, 2012. Testimony was received from Petitioner Ampai Redding (assisted by a friend, Brian Hale) and Housing Code Inspector Jason White (sitting in for Unray Peters). There were no witnesses from the community.

² Testimony from the first hearing is identified as “4/12/12 Tr. –.” The second hearing, where substantive evidence was received regarding the current condition of the site, is referenced simply as “Tr. ---.”

Petitioner indicated that she understood the proceedings and did not need a translator. Tr. 4-5. After assuring that Petitioner had reviewed copies of all the DHCA and Technical Staff reports, the Hearing Examiner once again explained to Ms. Redding that she could not have both the accessory apartment and additional boarders beyond the maximum of two accessory apartment tenants. Tr. 6-15. Petitioner then stated that she thought she should be able to have both, and the law should be changed. After the Hearing Examiner and Mr. White explained it again, Ms. Redding indicated she understood. Tr. 16-19. The hearing was recessed so that Petitioner could discuss what she wanted to do with Mr. Hale. When she returned, Petitioner indicated that she would proceed with the accessory apartment application. Tr. 19-20.

Petitioner executed an affidavit of posting (Exhibit 36) and promised to file a copy of her deed. She adopted the findings in the revised Technical Staff Report (Exhibit 33) and in the Housing Code Inspector's Reports (Exhibits 19, 30 and 34), as Petitioner's own evidence. Tr. 20-24. She also agreed to meet all the conditions set forth in those reports. Tr. 20-24.

The record was held open following the hearing until December 27, 2012 to await the filing by Petitioner of a copy of her deed (Exhibit 37), which she timely filed. Tr. 36-37.

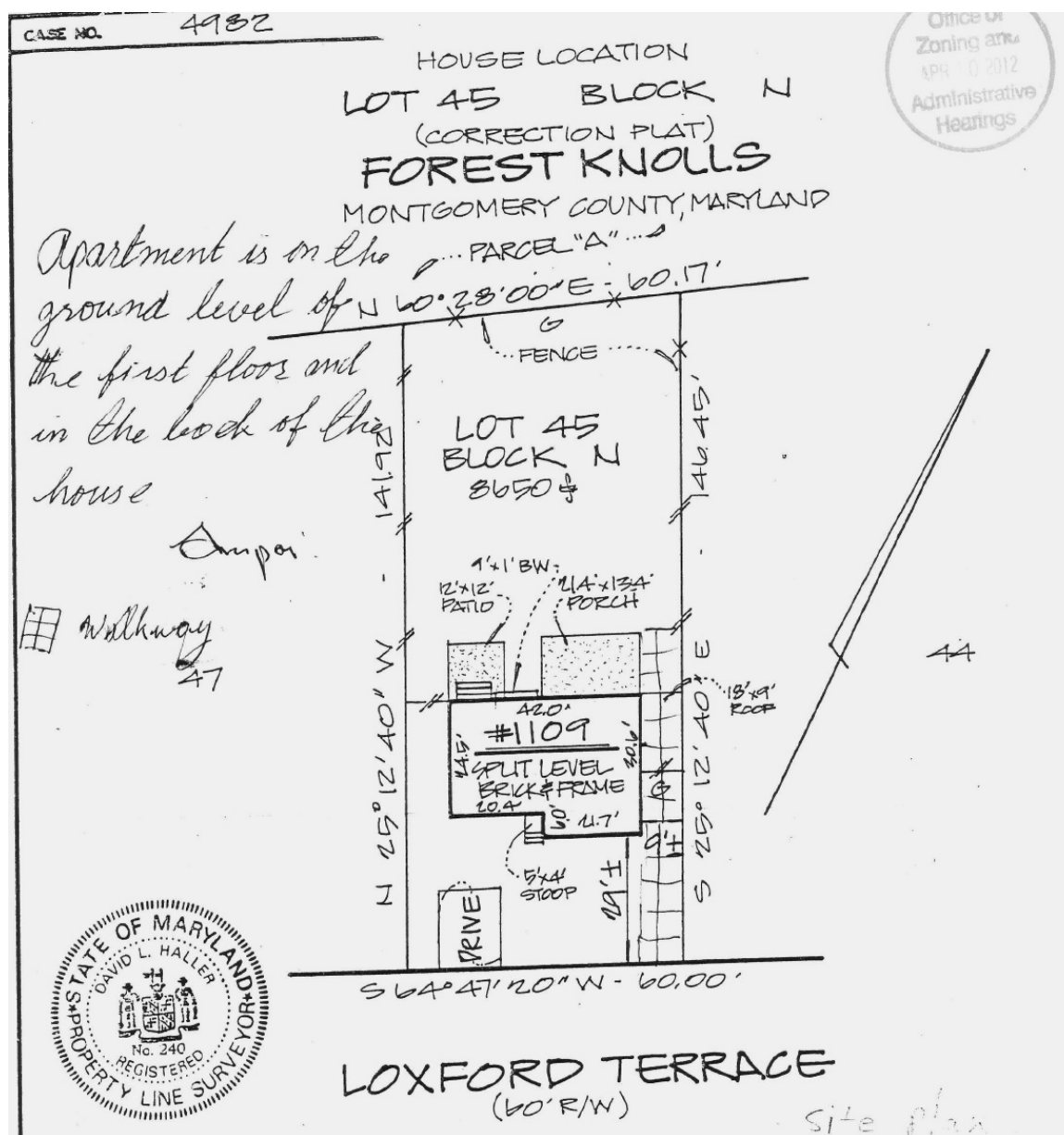
The record closed, as scheduled, on December 27, 2012. There has been no input from the community on this case, and there is no opposition to this special exception petition. Based on Petitioner's responses to the Hearing Examiner's questions, he concludes that Petitioner understands the restrictions imposed by Zoning Ordinance, as discussed above; she just does not like them. Nevertheless, the Hearing Examiner finds that the petition currently meets all of the statutory criteria, and he therefore recommends that the petition be granted, with conditions.

II. FACTUAL BACKGROUND

A. The Subject Property and the Neighborhood

The subject property is located at 1109 Loxford Terrace, in Silver Spring, about one third of

a mile east of the junction of Arcola Avenue and University Boulevard West (Rt. 193). The home is on a 8,650 square-foot, rectangular lot, as depicted in the revised site plan (Exhibit 20(a)), reproduced below:



Technical Staff described the property as follows (Exhibit 33, p. 2):

The subject property is described as lot 45, block N in the Forest Knolls subdivision, and fronts on Loxford Terrace. The main entrance to the apartment is in the back of the main house. The door is illuminated with standard residential-style lighting. There is a large Maple tree in the front of the property, small shrubs border the front of the main house, and larger

bushes serve as a divider with the neighboring properties on each side of the house. In the front yard, there is a depression in the ground and the stump of a tree. Along the side of the house leading to the accessory apartment is a brick walkway. Staff noticed that the walkway is poorly graded and that many of the bricks are not secured in the soil. The walkway will need to be repaired to make it safe for regular use.

The front and rear of the home can be seen in the following photographs supplied by Petitioner

(Exhibit 9(a)):



Front

Front of House



Rear of Home

Technical Staff defined the general neighborhood as bounded by Northwood Terrace to the north, Northwood High School to the west, an extended mid-block right-of-way to the east, and Malta Lane to the south. The entire neighborhood is zoned R-60 and contains no other special exception uses. Exhibit 33, p. 2. The Hearing Examiner accepts this neighborhood definition, and it is shown below on an aerial photo map supplied by Technical Staff (Exhibit 33, p. 3):

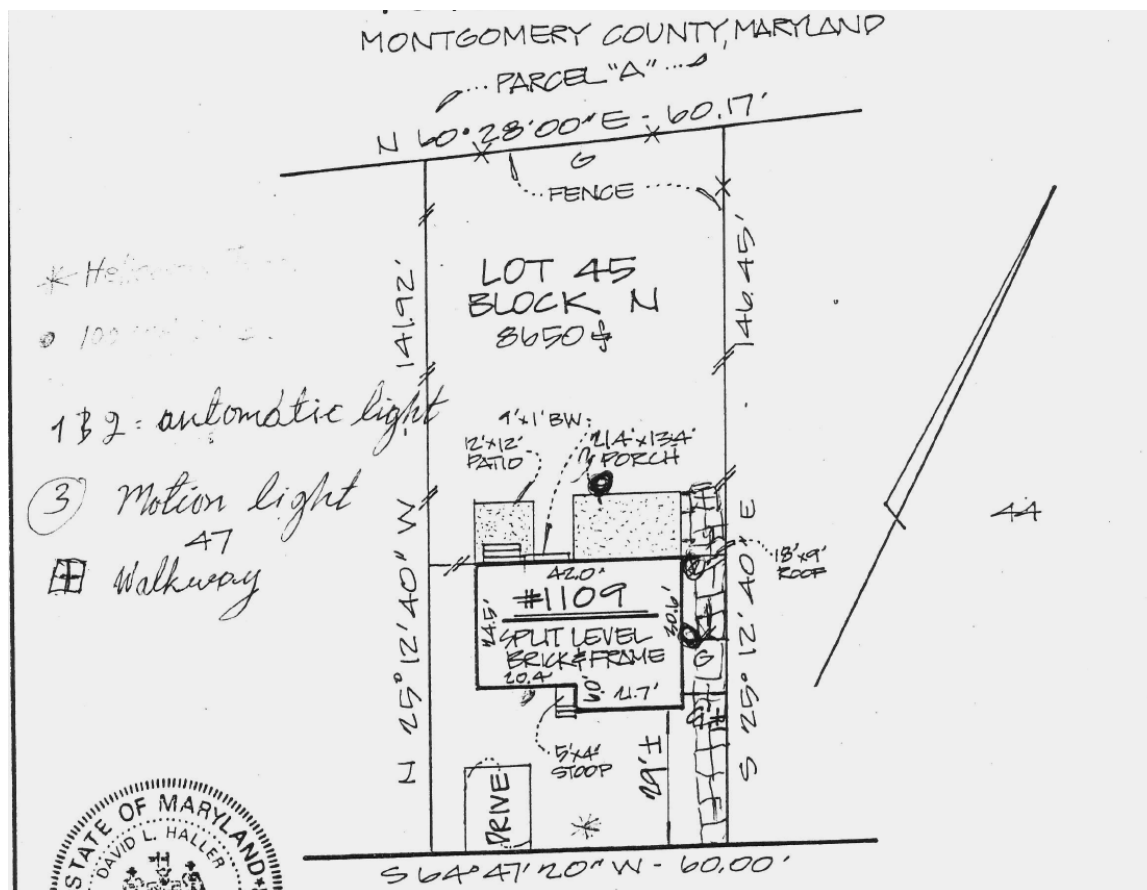


B. The Proposed Use

The Petitioner is seeking a special exception to allow a 462 square-foot, ground-level, accessory apartment in the rear of her existing home. The apartment entrance is to the rear (north side) of the home, as shown in the following photo supplied by Petitioner (Exhibit 9(b)):



The revised Landscape and Lighting Plan (Exhibit 20(b)), is reproduced below:



No external changes are planned as a result of the special exception, except to correct issues noted by the Housing Code Inspector. Tr. 25-29. Technical Staff stated that the project “does not have any proposed activities within any streams, wetlands, or environmental buffers and is in compliance with the Environmental Guidelines.” Exhibit 33, p. 5.

As further observed by Technical Staff, the entrance into the accessory apartment and the walkway to the apartment are illuminated with typical residential outdoor lighting. Staff found that no direct light would intrude into any adjacent residential property. Exhibit 33, p. 9. The appearance of the existing single-family unit will be preserved as a separate entrance to the accessory apartment currently exists, and no modifications are proposed. Exhibit 33, p. 11.

The floor plan for the accessory apartment (Exhibit 5) is shown below:



The overall floor area of the apartment is approximately 462 square feet (of which 258 square feet is habitable space), and includes a bathroom, a kitchen in the living area, and a bedroom. The Department of Housing and Community Affairs (DHCA) inspected the property on April 5, 2012, and Housing Code Inspector Unray Peters reported his findings in a memorandum dated April 5, 2012 (Exhibit 19). The substance of his report is set forth below:

The preliminary inspection was conducted on April 5, 2012. The Accessory Apartment is located in the rear of the house. The issues regarding Accessory Apartment standards are as follows:

1. The walkway entrance of accessory apartment needs to have secured and leveled stones so they are not a trip hazard.
2. All of the exterior solid waste must be removed this is to include bricks, broken stone, wood, branches, untagged/derelict motorcycle, auto parts and any other solid waste found throughout.
3. The bedroom would need to have all walls painted and repaired of any small holes.
4. The exterior fence needs to be repaired in the rear of the house.
5. The front yard must be properly landscaped to avoid further erosion and holes.
6. The owner is currently renting out a complete and independent unit in the main house that is currently occupied by two (2) tenants.

Note: The bedroom located in accessory apartment has three windows; two windows have identical measurements of 33 x 22 inches and from floor bottom of window sill height of 38 inches. The third window has a measurement of 33x22 inches and measures 32 inches from floor to bottom of window sill. The habitable square footage of unit is 258 square feet. The accessory apartment would allow two (2) related and/or unrelated occupants to live in unit.

There is a driveway located in front of home (Loxford Terrace) that extends 13 feet wide x 22 feet long totaling 286 square feet that will allow one (1) car to park in driveway. There is also on street parking on both sides of street (Loxford Terrace) and would accommodate multiple vehicles for parking.

As previously mentioned, a subsequent DHCA memorandum (Exhibit 34) reported that the previously noted violations had been corrected.

Technical Staff discussed the transportation issues at pages 3-4 of their report (Exhibit 33), stating:

The proposed Special Exception use meets all transportation-related requirements. It satisfies the Local Area Transportation Review (LATR) and Policy Area Mobility

Review (PAMR) tests, and will have no adverse impact on area roadways or nearby pedestrian facilities.

* * *

The proposed special exception application, if granted, will not adversely impact the existing pedestrian facilities.

* * *

The proposed accessory apartment within the existing single-family detached unit will generate one additional (or two total) peak-hour vehicular trips within both the weekday morning peak period (6:30 to 9:30 a.m.) and the evening peak period (4:00 to 7:00 p.m.). A traffic study is not required to satisfy LATR because the proposed use generates fewer than 30 peak-hour trips within the weekday morning and evening peak periods.

Although a development located in the Kensington/Wheaton Policy Area must mitigate 10% of their new, site-generated vehicular trips, PAMR mitigation is not required because the accessory apartment generates fewer than three new peak-hour trips.

Technical Staff also addressed vehicular access and parking (Exhibit 33, p. 4):

Vehicular access to the site's driveway is from Loxford Terrace. The existing driveway can accommodate one (1) vehicle and one vehicle can park on Loxford Terrace in front of the property (on-street parking is permitted on Loxford Terrace).

Petitioner testified that her driveway can hold two cars, and that there is plenty of parking available on the street. Tr. 32-34. The Housing Code Inspector stated, in his report quoted above, that the driveway could hold one car, but parking for "multiple vehicles" is available on the adjacent street.

Housing Inspector White stated that, based on the file, there is no reason why this accessory apartment application should be denied. Tr. 32.

Based on this record, and on the absence of any contrary evidence, the Hearing Examiner finds that parking for the accessory apartment is sufficient even if Petitioner's driveway can accommodate only one car. Moreover, the Hearing Examiner finds that the proposed accessory apartment will not unduly burden local transportation facilities, and that the special exception will not have an adverse effect on vehicular and pedestrian access or safety.

C. Neighborhood Response

There has been no response from the community, either positive or negative, to the subject petition. There is no opposition in the case.

D. The Master Plan

The subject property lies within the area covered by the 2001 Kemp Mill Master Plan. Technical Staff advises that there are no Master Plan recommendations specific to this site. Exhibit 33, p. 3. However, as noted by Staff, the Master Plan's vision includes a recommendation to "reinforce the unique character of these neighborhoods." Master Plan, p. 17. Technical Staff concludes (Exhibit 33, p. 3):

Staff believes that the proposed application is consistent with the Master Plan's overall goal. The applicant is not proposing to alter the existing residential appearance of the property to accommodate this request and there is no excessive concentration of special exceptions in staff's defined neighborhood. Therefore, the unique character of the neighborhood will not be disturbed by granting this special exception.

The Hearing Examiner notes that the Master Plan recommends keeping the current R-60 zoning, and the R-60 Zone permits accessory apartments by special exception. An accessory apartment would maintain the existing scale and type of housing, while providing for additional housing in the area. This accessory apartment would not be visible from the street and therefore would not change the existing structure's appearance as a single-family dwelling compatible with the surrounding neighborhood.

Thus, it is fair to say that the planned use, an accessory apartment in a single-family, detached home, is not inconsistent with the goals and objectives of the 2001 Kemp Mill Master Plan.

III. SUMMARY OF HEARING

There were two hearings in this case. The first was held on April 12, 2012, and testimony was given by Petitioner Ampai Redding and Housing Code Inspector Unray Peters. There was no community testimony.

April 12, 2012 Hearing:

The Hearing Examiner explained to Ms. Redding that Technical Staff had recommended

denial of the application (Exhibit 21) because “Information received from Department of Housing and Community Affairs, DHCA, housing inspector indicates that the applicant has a tenant occupying a guestroom for rent.” Staff therefore concluded that “. . . Ms. Redding's application does not meet Section 59-G-2.00(a)(5)(ii) which states that an accessory apartment, quote, 'must not be located on a lot that has a guestroom for rent . . .’” 4/12/12 Tr. 5-6.

Ms. Redding then admitted to having the boarders and tried to explain why she needed to have boarders. 4/12/12 Tr. 6-7. The Hearing Examiner explained that under Zoning Ordinance §59-G-2.00(a)(5)(ii), “The accessory apartment must not be located on a lot where any of the following otherwise allowed residential units exist: guestroom for rent, boarding house or registered living unit.” The Hearing Examiner added, “. . . if you're telling me that you're not going to give that up, you would not qualify for an accessory apartment.” 4/12/12 Tr. 8.

The Housing Code Inspector, Unray Peters, testified that Ms. Redding is allowed to have two roomers without having a rental license, but she currently has two roomers with cooking facilities, sleeping and sanitation. If they want to continue living there, they would have to get rid of all of the secondary cooking facilities, and she could not have the accessory apartment. 4/12/12 Tr. 9-11.

The Hearing Examiner then emphasized the point (4/12/12 Tr. 11-12):

. . . What I'm trying to tell you is you can't have, you can't have the accessory apartment, both that and the boarders, okay? You cannot have them all. You can only have an accessory apartment or other boarders. You cannot have all of them. That's what the statute says that I made you a copy of, okay, I just read you. . . . that's the reason why technical staff recommended a denial because you cannot have them all.

After these explanations were repeated again, the Hearing Examiner offered to postpone the hearing for months if Petitioner wanted to wait until she was in a better position to decide what to do. 4/12/12 Tr. 15. Petitioner elected to do that, and the hearing was postponed until September 20, 2012. 4/12/12 Tr. 16-20. The Hearing Examiner instructed Ms. Redding that she should inform OZAH and Technical Staff in writing by August 15, 2012, what she planned to do, so that Technical

Staff would have time to complete its report. 4/12/12 Tr. 21.

December 17, 2012 Hearing:

The second hearing convened, as scheduled, on December 17, 2012. Testimony was received from Petitioner Ampai Redding (assisted by a friend, Brian Hale) and Housing Code Inspector Jason White (sitting in for Unray Peters). There were no witnesses from the community and no opposition.

Petitioner indicated that she understood the proceedings and did not need a translator. Tr. 4-5. After assuring that Petitioner had reviewed copies of all the DHCA and Technical Staff reports, the Hearing Examiner once again explained to Ms. Redding that she could not have both the accessory apartment and additional boarders beyond the maximum of two accessory apartment tenants. Tr. 6-15. Petitioner then stated that she thought she should be able to have both, and the law should be changed. After the Hearing Examiner and Mr. White explained it again, Ms. Redding indicated she understood. Tr. 16-19. The hearing was recessed so that Petitioner could discuss with Mr. Hale what she wanted to do. When she returned, Petitioner indicated that she would proceed with the accessory apartment application. Tr. 19-20.

Petitioner executed an affidavit of posting (Exhibit 36) and promised to file a copy of her deed. Tr. 11-13. She adopted the findings in the revised Technical Staff Report (Exhibit 33) and in the Housing Code Inspector's Reports (Exhibits 19, 30 and 34), as Petitioner's own evidence. Tr. 20-24. She also agreed to meet all the conditions set forth in those reports. Tr. 20-24.

Petitioner identified the site, landscape and lighting plans, as well as photographs of the site, and she testified that she did not plan any changes outside the home. Tr. 25-29. Petitioner also identified the floor plan of the accessory apartment (Exhibit 5). Tr. 31-32.

Petitioner testified that there is room in her driveway for two cars, and in front of her house, which is on a cul-de-sac, there is room for two more cars. She has one car, but the tenants will also be able to

park in the driveway or on the street. Petitioner stated that there is no problem finding parking in the neighborhood. Tr. 32-34.

Mr. White testified, based on a note in the file from Mr. Peters, that the driveway is 13 feet wide by 22 feet long, totaling 286 square feet, which would allow one car to park in the driveway. There is also on-street parking on both sides of the street of Loxford Terrace, which accommodates multiple cars for parking. Tr. 34. Mr. White stated that, based on the file, there is no reason why this accessory apartment application should be denied. Tr. 32.

The record was held open following the hearing until December 27, 2012, to await the filing by Petitioner of a copy of her deed. Tr. 36-37.

IV. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The Zoning Code establishes both general and specific standards for special exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Technical Staff concluded that Petitioner will have satisfied all the requirements for a special exception, if she complies with the recommended conditions.

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (Code §59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use, as long as Petitioner complies with the conditions set forth in Part V, below.

A. Standard for Evaluation

The standard for evaluation prescribed in Code § 59-G-1.2.1 requires consideration of the inherent and non-inherent adverse effects on nearby properties and the general neighborhood from the proposed use at the proposed location. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code § 59-G-1.2.1. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with an accessory apartment. Characteristics of the proposed accessory apartment that are consistent with the “necessarily associated” characteristics of accessory apartments will be considered inherent adverse effects, while those characteristics of the proposed use that are not necessarily associated with accessory apartments, or that are created by unusual site conditions, will be considered non-inherent effects. The inherent and non-inherent effects thus identified must then be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff lists the following inherent characteristics of accessory apartments (Exhibit 33, p. 5):

- (1) the existence of the apartment as a separate entity from the main living unit, but sharing a party wall with the main unit;
- (2) the provision within the apartment of the necessary facilities, spaces and floor area to qualify as a habitable space under the Building Code;

- (3) provision of a separate entrance and walkway and sufficient lighting;
- (4) provision of sufficient parking;
- (5) the existence of an additional household on the site; and
- (6) additional activity from that household, including the potential for additional noise.

The Hearing Examiner concludes that, in general, an accessory apartment has characteristics similar to a single-family residence, with only a modest increase in traffic, parking and noise that would be consistent with a larger family occupying a single-family residence. Thus, the inherent effects of an accessory apartment would include the fact that an additional resident (or residents) will be added to the neighborhood, with the concomitant possibility of an additional vehicle or two.

Technical Staff found (Exhibit 33, p. 5):

. . . that the size, scale, and scope of the requested use are minimal, and that any noise, traffic, neighborhood disruption, or environmental impacts associated with the use would be slight. There are no unusual characteristics of the site. Staff concludes that there are no non-inherent adverse effects of the accessory apartment sufficient to form a basis for denial.

The Hearing Examiner agrees with Technical Staff. The undisputed evidence in the record of this case is that the combination of off-street and on-street parking is sufficient to accommodate both the owner and the accessory apartment tenants. (Occupancy will be limited to two persons because of the size of the apartment. Exhibit 19.)

Based on this record and considering the size, scale, scope, light, noise, traffic and environment, the Hearing Examiner concludes that neither the parking situation, nor any other site or use characteristic, will have undue adverse effects on the neighborhood. Therefore, the petition should not be denied.

B. General Conditions

The general standards for a special exception are found in Zoning Code §59-G-1.21(a). The Technical Staff report, the Housing Code Inspector's reports, the exhibits in this case and the testimony at the hearing provide ample evidence that these standards would be satisfied in this case.

Sec. 59-G-1.21. General conditions.

§5-G-1.21(a) -*A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

(1) Is a permissible special exception in the zone.

Conclusion: An accessory apartment is a permissible special exception in the R-60 Zone, pursuant to Code § 59-C-1.31.

(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

Conclusion: The proposed use complies with the specific standards set forth in § 59-G-2.00 for an accessory apartment, as outlined in Part C, below.

(3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

Conclusion: The subject property is covered by the Kemp Mill Master Plan, approved and adopted in 2001. An accessory apartment would maintain the existing scale and type of housing, thus not adversely impacting the neighborhood. Technical Staff therefore found the proposed use to be consistent with the Kemp Mill Master Plan, as does the Hearing Examiner.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

Conclusion: The accessory apartment will be located in an existing dwelling and will not require external changes. The site therefore will maintain its residential character. There will be sufficient on-street and off-street parking, as previously discussed. Traffic conditions will not be affected adversely, according to Transportation Planning Staff. Technical Staff also found that there are no other existing special exceptions in the general neighborhood. Exhibit 33, p. 2. Therefore, the proposed accessory apartment, if granted, will not result in an excessive concentration of similar uses. Based on these facts and the other evidence of record, the Hearing Examiner concludes, as did Technical Staff, that the proposed use will be in harmony with the general character of the neighborhood.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: For the reasons set forth in answer to the previous section of this report, the special exception will not be detrimental to the use, peaceful enjoyment, economic value, or development of the surrounding properties or the defined neighborhood, provided that the special exception is operated in compliance with the listed conditions of approval.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: Technical Staff found that “The proposed use will not cause any objectionable adverse effects.” Exhibit 33, p. 7. The Hearing Examiner finds that because the use

will be indoors and residential, it will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: As discussed above, the Hearing Examiner finds that the proposed special exception will not increase the number, scope, or intensity of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

Conclusion: Technical Staff indicates that the subject site will be adequately served by existing public services and facilities (Exhibit 33, p. 8), and the evidence supports this conclusion.

- (A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.*
- (B) *If the special exception:*
- (i) *does not require approval of a new preliminary plan of subdivision; and*

(ii) the determination of adequate public facilities for the site is not currently valid for an impact that is the same as or greater than the special exception's impact; then the Board of Appeals or the Hearing Examiner must determine the adequacy of public facilities when it considers the special exception application. The Board of Appeals or the Hearing Examiner must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application was submitted.

Conclusion: The special exception sought in this case would not require approval of a preliminary plan of subdivision, and there is no currently valid determination of the adequacy of public facilities for the site, taking into account the impact of the proposed special exception. Therefore, the Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the applicable Growth Policy standards. These standards include Local Area Transportation Review (LATR) and Policy Area Mobility Review (PAMR). As indicated in Part II. B. of this report, Transportation Planning Staff did do such a review, and concluded that the proposed accessory apartment use would add one additional trip during each of the peak-hour weekday periods. Exhibit 33, pp. 3-4. Since the existing house, combined with the proposed accessory apartment, would generate fewer than 30 total trips in the weekday morning and evening peak hours, the requirements of the LATR are satisfied without a traffic study. Since the proposed use is estimated to generate only one additional peak-hour trip, PAMR is also satisfied. Therefore, the Transportation Staff concluded, as does the Hearing Examiner, that the instant petition meets all the applicable Growth Policy standards.

(C) *With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.*

Conclusion: Based on the evidence of record, especially the Technical Staff's conclusion that "[t]he proposal will not reduce the safety of vehicular or pedestrian traffic," the Hearing Examiner so finds. Exhibit 33, p. 8.

C. Specific Standards

The testimony and the exhibits of record, especially the Technical Staff Report (Exhibit 33), provide sufficient evidence that the specific standards required by Section 59-G-2.00 are satisfied in this case, as described below.

Sec. 59-G-2.00. Accessory apartment.

A special exception may be granted for an accessory apartment on the same lot as an existing one-family detached dwelling, subject to the following standards and requirements:

(a) Dwelling unit requirements:

- (1) Only one accessory apartment may be created on the same lot as an existing one-family detached dwelling.*

Conclusion: Only one accessory apartment is proposed.

- (2) The accessory apartment must have at least one party wall in common with the main dwelling on a lot of one acre (43,560 square feet) or less. On a lot of more than one acre, an accessory apartment may be added to an existing one-family detached dwelling, or may be created through conversion of a separate accessory structure already existing on the same lot as the main dwelling on December 2, 1983. An accessory apartment may be permitted in a separate accessory structure built after December 2, 1983, provided:*
 - (i) The lot is 2 acres or more in size; and*
 - (ii) The apartment will house a care-giver found by the Board to be needed to provide assistance to an elderly, ill or handicapped relative of the owner-occupant.*

Conclusion: The apartment is located in the rear of an existing house, and therefore shares a wall in common, as required for a lot of this size (under an acre).

- (3) *An addition or extension to a main dwelling may be approved in order to add additional floor space to accommodate an accessory apartment. All development standards of the zone apply. An addition to an accessory structure is not permitted.*

Conclusion: No new addition or extension of the main dwelling is proposed. The accessory apartment will be located in an existing dwelling.

- (4) *The one-family detached dwelling in which the accessory apartment is to be created or to which it is to be added must be at least 5 years old on the date of application for special exception.*

Conclusion: The house was built in 1961. Exhibit 33, p. 10. It therefore meets the “5 years old” requirement.

- (5) *The accessory apartment must not be located on a lot:*

- (i) *That is occupied by a family of unrelated persons; or*
- (ii) *Where any of the following otherwise allowed residential uses exist: guest room for rent, boardinghouse or a registered living unit; or*
- (iii) *That contains any rental residential use other than an accessory dwelling in an agricultural zone.*

Conclusion: This provision has been explained numerous times to the Petitioner because there were two boarders in the home when the subject petition was filed. See transcripts of both hearings. Currently, there are no boarders present (Exhibit 34), and Petitioner indicated that she understands the restriction. Tr. 16-19. Nevertheless, conditions have been recommended in Part V of this report to ensure continued compliance. If followed, the proposed use will not violate any of the provisions of this subsection.

- (6) *Any separate entrance must be located so that the appearance of a single-family dwelling is preserved.*

Conclusion: Access to the accessory apartment will preserve the appearance of a one-family dwelling. The apartment entrance is separate from the main entrance and located in the rear of the home, thus preserving the appearance of a single-family dwelling.

- (7) All external modifications and improvements must be compatible with the existing dwelling and surrounding properties.*

Conclusion: No external changes are planned, except as needed to accomplish repairs required by the Housing Code Inspector. There will thus be no change to the home's residential appearance.

- (8) The accessory apartment must have the same street address (house number) as the main dwelling.*

Conclusion: The accessory apartment will have the same address as the main dwelling.

- (9) The accessory apartment must be subordinate to the main dwelling. The floor area of the accessory apartment is limited to a maximum of 1,200 square feet.*

Conclusion: The accessory apartment, at 462 square feet (258 square feet of which is habitable space), is well under the maximum of 1200 square feet, and it will clearly be subordinate to the main dwelling, which according to Technical Staff, has a total floor area of 2,910 square feet. Exhibit 33, p. 11.

59-G § 2.00(b) Ownership Requirements

- (1) The owner of the lot on which the accessory apartment is located must occupy one of the dwelling units, except for bona fide temporary absences not exceeding 6 months in any 12-month period. The period of temporary absence may be increased by the Board upon a finding that a hardship would otherwise result.*

Conclusion: The Petitioner will live in the main dwelling unit on the property.

- (2) Except in the case of an accessory apartment that exists at the time of the acquisition of the home by the Petitioner, one year must have elapsed between the date when the owner purchased the property (settlement date) and the date when the special exception becomes effective. The Board may waive this requirement upon a finding that a hardship would otherwise result.*

Conclusion: Petitioner and her husband purchased the subject site in 1988, as shown by the deed (Exhibit 37). According to Maryland tax records, the property was transferred into

Petitioner's sole name on April 25, 2002. Exhibit 35. Petitioner thus meets the one-year ownership provision of Zoning Ordinance §59-G-2.00(b)(2).

- (3) *Under no circumstances, is the owner allowed to receive compensation for the occupancy of more than one dwelling unit.*

Conclusion: The Petitioner will receive compensation for only one dwelling unit as a condition of the special exception.

- (4) *For purposes of this section owner means an individual who owns, or whose parent or child owns, a substantial equitable interest in the property as determined by the Board.*

Conclusion: The Petitioner is the owner of the property.

- (5) *The restrictions under (1) and (3) above do not apply if the accessory apartment is occupied by an elderly person who has been a continuous tenant of the accessory apartment for at least 20 years.*

Conclusion: Not applicable.

59-G § 2.00(c) Land Use Requirements

- (1) *The minimum lot size must be 6,000 square feet, except where the minimum lot size of the zone is larger. A property consisting of more than one record lot, including a fraction of a lot, is to be treated as one lot if it contains a single one-family detached dwelling lawfully constructed prior to October, 1967. All other development standards of the zone must also apply, including setbacks, lot width, lot coverage, building height and the standards for an accessory building in the case of conversion of such a building.*

Conclusion: The subject lot is approximately 8,650 square feet in size, and therefore satisfies this requirement. According to Technical Staff, the subject property conforms to all applicable development standards of the zone. Exhibit 33, p. 8. The following table from the Technical Staff report summarizes the relevant development standards for the application. Exhibit 33, p. 8.

Table 1: Applicable Development Standards – R-60 Zone

Development Standards – R-60/Acc. Apt.	Requirement	Provided
Maximum Building Height:	40 ft.	11 feet
Minimum Lot Area:	6,000 sq. ft.	8,650 sq. ft.
Minimum Width at Front Building Line:	60 ft.	±60 ft.
Minimum Width at Proposed Street Line:	25 ft.	±60
Minimum Front Yard Setback:	25 ft.	±29 ft.
Minimum Side Yard Setback:	8 ft. one side, 18 ft. sum of both sides	±9 ft. left side, 18. sum of both sides
Minimum Rear Yard Setback:	20 ft.	±85 ft.
Maximum Building Coverage:	35%	13.45%
Maximum Floor Area for Accessory Apartment	1,200 sq. ft. or less than 50% of GFA	±462 sq. ft.

(2) *An accessory apartment must not, when considered in combination with other existing or approved accessory apartments, result in excessive concentration of similar uses, including other special exception uses, in the general neighborhood of the proposed use (see also section G-1.21 (a)(7) which concerns excessive concentration of special exceptions in general).*

Conclusion: As previously stated in this report, the Hearing Examiner concludes that the proposed special exception will not create an excessive concentration of similar uses since there are no other special exceptions in the neighborhood.

(3) *Adequate parking must be provided. There must be a minimum of 2 off-street parking spaces unless the Board makes either of the following findings:*

- (i) *More spaces are required to supplement on-street parking; or*
- (ii) *Adequate on-street parking permits fewer off-street spaces.*

Off-street parking spaces may be in a driveway but otherwise must not be located in the yard area between the front of the house and the street right-of-way line.

Conclusion: As discussed in Part II.B. of this report, there is at least one off-street space on Petitioner's property, and there is ample on-street parking according to both Technical Staff and the Housing Code Inspector. As stated by Technical Staff (Exhibit 33, p. 9):

The proposed special exception request meets the parking requirements of Article 59-E. The code normally requires two off-street spaces for an accessory apartment but allows for fewer spaces if there is adequate on-street parking. The property has only one off-street parking space reserved for the homeowner. However, there is adequate on-street parking on Loxford Terrace so the lack of off-street parking should not be a problem. Therefore, adequate parking exists for the proposed accessory apartment.

Based on this record, the Hearing Examiner finds that adequate on-street parking permits fewer than two off-street spaces.

D. Additional Applicable Standards

Not only must an accessory apartment comply with the zoning requirements as set forth in 59-G, it must also be approved for habitation by the Department of Housing and Community Affairs. As discussed in Part II. B. of this Report, the Housing Code Inspector's report (Exhibit 19) specifies certain conditions. Petitioner has agreed to meet all conditions, and will comply with directives of the Housing Code Inspector. Tr. 20-24.

V. RECOMMENDATION

Based on the foregoing analysis, I recommend that the Petition of Ampai Redding, BOA No. S-2827, which seeks a special exception for an accessory apartment located at 1109 Loxford Terrace, Silver Spring, Maryland, be GRANTED, with the Board finding that adequate on-street parking permits fewer than two off-street parking spaces, and with the following conditions:

1. The Petitioner is bound by her testimony, representations and exhibits of record;
2. The Petitioner must comply with the conditions set forth in the Memorandum of Unray

Peters, Housing Code Inspector, Division of Housing and Code Enforcement (Exhibit 19):

- a. The walkway entrance of accessory apartment needs to have secured and leveled stones so they are not a trip hazard.
 - b. All of the exterior solid waste must be removed[;] this is to include bricks, broken stone, wood, branches, untagged/derelict motorcycle, auto parts and any other solid waste found throughout.
 - c. The bedroom would need to have all walls painted and repaired of any small holes.
 - d. The exterior fence needs to be repaired in the rear of the house.
 - e. The front yard must be properly landscaped to avoid further erosion and holes.
 - f. The owner [must not resume] renting out a . . . unit in the main house that [had been] occupied by two (2) tenants.
3. Petitioner must comply with the determination of the Housing Code Inspector as to limits on occupancy in the accessory apartment (up to two persons) and must comply with any other directions of the Housing Code Inspector to ensure safe and code-compliant occupancy;
 4. Petitioner must not have a guest room for rent, a boardinghouse or a registered living unit, in addition to the accessory apartment;
 5. Petitioner must occupy one of the dwelling units on the lot on which the accessory apartment is located;
 6. Petitioner must not receive compensation for the occupancy of more than one dwelling unit; and
 7. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: January 24, 2013

Respectfully submitted,



Martin L. Grossman
Hearing Examiner